ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	

PETITION FOR RECONSIDERATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, hereby respectfully requests that the Commission reconsider, in one respect, its *Third Report and Order*, 15 FCC Rcd 15996 (2000) (*Third Report*) as clarified on the Commission's own motion by *Order*, FCC 01-67 (released February 22, 2001) (*Clarification Order*) in the above-captioned docket. Specifically, Sprint asks that the Commission reconsider its decision to require wireline and fixed wireless local exchange carriers ("LECs") to report the number of complaints they receive from customers alleging that they have been slammed by other carriers as well as the identities of the carriers against whom such accusations have been leveled. *See* 47 C.F.R. §64.1180(b)(4) and (5).[1] These reporting requirement should be eliminated because such information will invariably be misleading as to the extent of any

[1] Under Section 64.1180(b)(4) LECs are required to submit reports containing "the names of the entities against which the slamming complaints received during the reporting period were directed" while under Section 64.1180(b)(5) they are required to submit "the number of slamming complaints received during the reporting period that were lodged against the entities identified in subsection (b)(4) of this section."

carrier's sales/verification practices and cannot legitimately be used for its intended purpose of providing the Commission a basis for an investigation into a carrier's practices. *Id.* at 16023 (¶56). In support of its request here, Sprint states as follows.

There can be no question that the Commission's ability to regulate in the public interest depends upon receipt by the Commission of accurate information from industry participants. Section 1.17 of the Commission's Rules, 47 C.F.R. §1.17 emphasizes the obligation all entities subject to the Commission's jurisdiction to respond truthfully to requests for information by the Commission and to submit reports, pleadings, etc. free from misrepresentations.[2] Yet, the Commission has now required, contrary to its own rules, that LECs submit data, pursuant to Section 64.1180(b)(4) and (5), that are certain to be inaccurate and misleading.

Indeed, the Commission recognizes as much. The Commission notes that in instances where the customer may have been slammed by a switchless reseller and calls the LEC to complain, the LEC will likely inform -- or perhaps, to be more precise, misinform -- the customer that the switchless reseller's underlying facilities-based carrier is the culprit of the alleged slam. This is so because LEC records identify carriers by carrier identification codes (CICs) and many switchless resellers do not have CICs on their own. Rather they elect to use the CICs of the underlying facilities-based carrier from whom they obtain service. *See Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1594-1595 (¶148) 1998 ("[A]though a consumer is subscribed to a switchless reseller, the LEC will identify the subscriber's carrier as the facilities-based carrier because the LEC's records show that the

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[2] Section 1.17 provides in relevant part that "[n]o applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission."

reseller's CIC is the same as that of the facilities-based carrier."); *see also*, *Third Report*, 15 FCC Rcd at 16007-16008 (¶22) ("Carrier misidentification occurs because...[a] LEC's call record ...is likely to reflect the identity of the underlying carrier whose CIC is used, even if the actual service provider is a reseller.").

Sprint does not attribute any ill-motives to the LECs here and does not suggest here that LECs are providing such misinformation to the customer deliberately.[3] In fact, in instances where the customer changes his/her preferred carrier from the underlying facilities-based carrier to a switchless reseller of that carrier, or from one switchless reseller to another, both of whom have the same underlying carrier, the LEC may not be informed of the change. This is so because the underlying facilities-based carrier is the executing carrier and the CIC is likely to remain the same. Similarly, in cases where the customer changes his/her preferred carrier from a switchless reseller of one facilities-based carrier to a switchless reseller of another facilities-based carrier, thereby requiring a change of the CIC in the LEC switch and records, the only thing the LEC may know is that the customer has changed his/her preferred carrier from one facilities-based carrier to another. Sprint's point is that the LECs do not keep records that enable them to provide accurate and reliable information to the Commission as to the identities of the carrier that allegedly slammed the customer. And, since the information will be inaccurate, it will be of little, if any, help in determining whether the Commission needs to launch "an immediate investigation into a carrier's practices." *Third Report,* 15 FCC Rcd at 16023 (¶56).

Yet another problem with the subject reporting requirement is that, as the Commission

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[3] Nonetheless relying upon LECs to gather and report to the Commission all slamming allegations against other carriers regardless of the accuracy of such allegations is particularly problematic. The LECs are now the competitors of such carriers and the Commission has given them to opportunity to file a report that will be used to harm their rivals without fear of reprisal.

also correctly recognizes, "a subscriber complaint is not, in and of itself, dispositive proof of a slam." *Id.* In fact, a customer will often claim to have been slammed if he/she sees charges on the LEC bill for dial-around calls made by the customer or for collect calls accepted by the customer that were carried by a carrier other than the customer's preferred carrier. A customer may claim to have been victim of a slam if the rate the customer was charged by the his/her preferred carrier is not the rate the customer understood to have been promised. And, a customer may allege a slam is cases where perhaps the customer was unaware that another member of the household had selected a new carrier or where the customer regretted his/her decision to change carriers (*i.e.,* buyer's remorse).

The customer service representative of the LEC may have little information available and certainly no incentive to question the accuracy of the slamming allegation of a customer. Rather, such representative's incentive, at a minimum, is to inform the customer of his/her rights as a "slamming victim" as promulgated by the FCC and perhaps by the public service commission of the customer's home State; end the call; and, take the call of the next customer in queue. Nonetheless, the call will be recorded by the LEC as a slamming complaint against a particular carrier; reported to the Commission; and then relied on by the Commission to launch enforcement actions against the accused carrier. *Third Report,* 15 FCC Rcd at 16023 (¶56). And, to make matters worse, the Commission will make the inaccurate reports available for public inspection so that "they compel carriers to reduce slamming on their own to avoid public embarrassment or loss of goodwill." *Id.* at 16023 (¶55). Thus, carriers accused of slamming will be forced to defend themselves both before the Commission and in the court of public opinion even though the information upon which such accusations are based is recognized to be misleading at best and perhaps totally wrong. And this, in turn, will make even more difficult for

IXCs to justify the continued provision of long distance service to especially small residential customers.

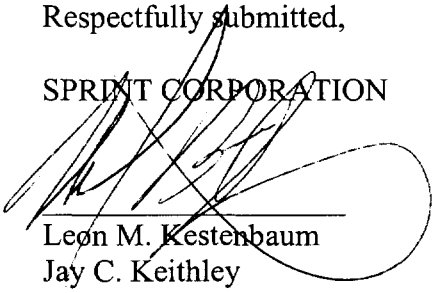
One additional point bears mention here. On March 28, 2001, the Commission posted the slamming complaint reporting form with instructions to its website. Those instructions will require all carriers to report all "slamming complaints" they receive during the reporting period from a consumer, another carrier, or a government agency. The instructions define the term "complaint," as any "allegation of slamming." Instructions to the Slamming Complaint Reporting Form (FCC Form 478) at 6. Such an expansive definition of the term "complaint" does not appear in the reporting rules adopted by the Commission in the *Third Report* and is completely unjustified. Just because a consumer utters the phrase "I have been slammed" to a carrier or a competitor of the carrier does not mean that such statement is even remotely connected to the matter about which the subscriber may have called. Customers may not know what constitutes a slam and may use the phrase to describe any problem the customer may have with his/her chosen carrier. But, if a customer says the word slam, the carrier will have to report it as a "slamming complaint" to the Commission. Thus, the customer's mere utterance of the word "slam" can lead to enforcement actions by the Commission against the carrier and be used to publicly embarrass the carrier and reduce its goodwill in the market. *Third Report*, 15 FCC Rcd at 16023 (¶55).

Sprint believes that if the Commission seeks accurate information -- as its rules require -- the only "complaints" that should be reported are the ones the carrier receives from the relevant government agency. In such cases, at least, the consumer will likely have to provide some detail as to slamming incident thereby enabling the person reviewing the complaint to make an initial determination as whether the consumer's allegation comes within the definition of a slam.

Accordingly, Sprint respectfully requests that the Commission eliminate the reporting requirements set forth in 47 C.F.R. §64.1180(b)(4) and (5).

Respectfully submitted,

SPRINT CORPORATION



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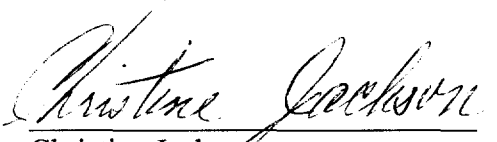
April 2, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PETITION FOR RECONSIDERATION** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 2nd day of April, 2001 to the below-listed parties:



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April 2, 2001

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